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2015 IL App (3d) 140438-U

Order filed May 11, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

RONDA NULL,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Tazewell County, Illinois.
	)	
v.	)	Appeal No. 3-13-0438
	)	Circuit No. 12-MR-117
INSPECTION DEPARTMENT and	)	
CITY OF PEKIN,	)	
	)	Honorable Paul Gilfillan,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff suffered no prejudice as the result of the trial court's denial of her motion for extension of time to file either a postjudgment motion or notice of appeal.
- ¶ 2 Plaintiff, Ronda Null, filed a complaint for administrative review against defendant, City of Pekin, in the Tazewell County circuit court.
- ¶ 3 The trial court denied plaintiff's complaint on February 14, 2014. Shortly thereafter, plaintiff's attorney filed a motion to withdraw, as well as a motion for extension of time for plaintiff to file a posttrial motion or notice of appeal.

¶ 4 The trial court denied plaintiff's motion for extension of time and granted the attorney's motion to withdraw. Plaintiff timely filed a motion to reconsider *pro se*, which, after other various *pro se* filings, the trial court ultimately denied.

¶ 5 Plaintiff appeals, claiming the trial court abused its discretion in denying her motion for an extension of time to secure new counsel, forcing her to file a motion to reconsider *pro se* without the assistance of counsel in violation of Supreme Court Rule 13(c) (2) (eff. July 1, 2013).

¶ 6 We affirm.

¶ 7 **BACKGROUND**

¶ 8 Plaintiff, Ronda Null, filed a complaint for administrative review against defendant, City of Pekin, on November 14, 2012, in the Tazewell County circuit court. Defendant filed its answer on April 12, 2013.

¶ 9 Plaintiff filed a motion in support of complaint for administrative review on December 26, 2013. Defendant filed its response on February 10, 2014.

¶ 10 The trial court ultimately denied plaintiff's complaint for administrative review on February 14, 2014.

¶ 11 On February 26, 2014, plaintiff's attorney filed a motion to withdraw as counsel and noticed the same for hearing on March 14, 2014. Plaintiff's attorney contemporaneously filed a motion for extension of time seeking an additional 30 days beyond March 14, 2014, for plaintiff to file either a motion to reconsider or a notice of appeal.

¶ 12 At the March 14 hearing, the trial court first addressed plaintiff's motion for extension of time so that her attorney would be able to argue for her in the event the court granted counsel's motion to withdraw. Following argument, during which defendant objected to the extension, the

trial court denied plaintiff's motion. The court advised the parties that plaintiff had until Monday, March 17, 2014, to file either a postjudgment motion or notice of appeal to comport with the 30-day time frame.

¶ 13 Next, moving on to counsel's motion to withdraw, the trial court inquired of plaintiff whether she had any objection to her attorney withdrawing. Plaintiff stated, "My objection to him withdrawing is he's held me up in filing this motion to withdraw. He could have come in before the 14th. I would have clearly understood —." The court indicated that it did not want to get involved in any dispute between plaintiff and her attorney, and asked her again whether or not she agreed or disagreed with counsel's motion to withdraw. Plaintiff stated that counsel could withdraw.

¶ 14 The trial court stated, "Indicate the motion to withdraw is granted with agreement of client Null and give her the usual 21 days to either file her own appearance on her own behalf or to retain a lawyer for that purpose. \*\*\* But she is advised in open court on the record that Monday appears to be a deadline for her so if she hires an attorney in 21 days, that might not be any good."

¶ 15 Plaintiff filed a *pro se* motion to reconsider on Monday, March 17, 2014.

¶ 16 Defendant noticed the hearing on plaintiff's motion for April 21, 2014. On March 28, 2014, plaintiff filed an entry of appearance *pro se*. On April 15, 2014, plaintiff filed a "supplement to motion to reconsider." The following day, plaintiff filed a motion to continue the scheduled April 21 hearing. The trial court entered an order continuing the hearing on plaintiff's motion to reconsider to May 2, 2014.

¶ 17 Following the parties' arguments at the May 2 hearing, the trial court denied plaintiff's motion to reconsider.

¶ 18 Plaintiff appeals.

¶ 19 ANALYSIS

¶ 20 The entirety of plaintiff's appeal focuses on the trial court's denial of her motion for extension of time to file either a postjudgment motion or a notice of appeal while allowing her counsel to simultaneously withdraw. Specifically, plaintiff complains that the trial court abused its discretion in denying her motion for extension of time, violating Illinois Supreme Court Rule 13(c)(2) (eff. July 1, 2013) and forcing her to proceed *pro se* without the assistance of counsel.

¶ 21 First, we note that while the motion was entitled "motion for extension of time," plaintiff repeatedly refers to the motion as a "motion for a continuance." Labels aside, plaintiff clearly sought additional time, above and beyond the 30 days after the entry of final judgment, in which to file either a posttrial motion pursuant to section 2-1203 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1203 (West 2012)), or a notice of appeal pursuant to Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015).

¶ 22 We find that regardless of the motion's name, our analysis remains the same. Indeed, many courts use the terms interchangeably and reference both Supreme Court Rule 183 and section 2-1007 of the Code simultaneously when determining whether the trial court abused its discretion in denying a party's motion. See *Schloss v. Jumper*, 2014 IL App (4th) 121086, ¶ 37 (citing to both section 2-1007 and Rule 183 when noting that the trial court is vested with wide discretion in granting or denying extensions of time to file pleadings or motions); 735 ILCS 5/2-1007 (West 2012); Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). Rule 183 provides that the trial court, for good cause shown, may extend the time for filing any pleading or the doing of any act that the rules require to be done within a limited period, either before or after the expiration of the time. Similarly, section 2-1007 provides that continuances may be granted for good cause shown

at the discretion of the court and on just terms. 735 ILCS 5/2-1007 (West 2012). By either rule's standard, the trial judge's decision to deny a continuance or extension of time will not be disturbed absent an abuse of discretion. *Schloss*, 2014 IL App (4th) 121086, ¶ 37; see also *Vision Point of Sale, Inc. v. Hass*, 226 Ill. 2d 334, 353 (2007). Furthermore, we note that there is no absolute right to a continuance. *Chicago Motor Club v. Robinson*, 316 Ill. App. 3d 1163, 1169 (2000). The denial of a request for continuance will not be grounds for reversal unless the complaining party has been prejudiced by the denial. *Id.*

¶ 23 Most fatal to plaintiff's claim, however, is the fact that she suffered no prejudice as a result of the denial. Indeed, while plaintiff posits the denial was "manifestly unfair," she fails to point out how it changed the outcome. Upon denying her motion for an extension of time, the court very clearly explained to plaintiff that she had until the following Monday to file either a postjudgment motion or notice of appeal in order to maintain her right to appeal. We recognize that plaintiff was probably unable to find new counsel over the weekend on such short notice. Yet, three particular facts render that inconsequential: (1) plaintiff had notice of counsel's motion to withdraw more than two weeks prior to the March 14 hearing and counsel's withdrawal was at plaintiff's behest; (2) plaintiff did actually file a motion to reconsider, thereby tolling the 30-day time limit and preserving her right to appeal; and (3) plaintiff had plenty of time, even beyond 21 days to hire new counsel before the court finally ruled on her motion on May 2.

¶ 24 Had plaintiff failed to file a motion to reconsider or notice of appeal within the designated time frame, resulting in the loss of the trial court's jurisdiction to entertain a postjudgment motion and the loss of plaintiff's ability to appeal the final judgment, we would have a different case. We are not confronted with that situation here. Not only did plaintiff successfully file a motion to reconsider tolling the 30-day time frame and preserving her right to

appeal, she also continued to represent herself *pro se* and even amended her motion and secured a continuance at a time when she could have retained new counsel.

¶ 25 By way of example, following the March 17 filing of her *pro se* motion to reconsider, plaintiff filed an entry of appearance *pro se* on March 28. On April 15, 30 days after filing her motion to reconsider, plaintiff filed both a motion to transcribe hearings and a supplement to the motion to reconsider. On April 16, plaintiff filed a motion to continue the hearing. The trial court granted the motion and rescheduled the hearing on plaintiff's motion to reconsider to May 2, 2014, indicating that any future requests by plaintiff for a continuance would not be favored.

¶ 26 Plaintiff then appeared *pro se* at the May 2 hearing, which we note was 50 days from the denial of her motion to extend time. Plaintiff may have had to file her motion to reconsider *pro se* in order to toll the time for filing a notice of appeal, but the record indicates that she continued to represent herself *pro se* well past that date. Moreover, the trial court allowed her to supplement her motion to reconsider. It seems readily apparent to us that plaintiff could have found an attorney within that time frame, and that the trial court would have allowed counsel to either supplement the motion or file an amended motion. At the very least, counsel could have appeared and argued on her behalf at the May 2 hearing. Plaintiff had 50 days to find an attorney; she did not do so. Plaintiff has failed to show any prejudice whatsoever resulting from the trial court's denial of her motion for extension of time.

¶ 27 Finally, plaintiff contends the trial court's denial of her motion for extension of time violated Supreme Court Rule 13(c)(2) mandate that a party be given 21 days to acquire new counsel following their attorney's withdrawal. The plaintiff may be correct that "there would have been no harm to anyone in the case if the trial court simply allowed the *pro se* plaintiff 21 days to obtain a new attorney before requiring her to prepare and file her motion to reconsider in

3 days," but the reality is that plaintiff was not prejudiced by the court's failure to do so.

Notwithstanding the trial court's denial of the March 14 motion, plaintiff ultimately was allotted time well beyond the 21 days mandated by Supreme Court Rule 13.

¶ 28 In support, plaintiff cites to *In re Marriage of Miller*, 273 Ill. App. 3d 64, 69 (1995), where this court held that the letter and spirit of Rule 13 requires a 21-day transition period and that nothing prejudicing a client's rights should occur within the 21 days following the allowance of an attorney's withdrawal. *Miller*, however, is distinguishable from the case at bar. The "trial court granted the motion to withdraw on the very eve of trial, but denied respondent's motion to continue to seek new representation because to grant respondent's request for a continuance *would delay the trial of the case.*" (Emphasis in original.) *Id.* at 68. The court went on to state:

"We are cognizant of the trial court's attention to economy of judicial resources and its understandable concern over the loss of two days from the docket. Rule 13, however, permits the trial court to deny the attorney's motion to withdraw if granting the motion would delay the trial of the case. If the trial court was not inclined to continue the trial, it simply should not have granted the motion to withdraw. Once the trial court granted the motion to withdraw, Rule 13 requires a continuance of at least 21 days after the order granting withdrawal so that the party can retain other counsel *or* enter her own supplementary appearance." (Emphasis in original.) *Id.* at 69.

¶ 29 By contrast, plaintiff here was not denied representation on the eve of trial. She was fully represented by counsel at the time the trial court denied her complaint for administrative review.

Again, it is important to note that counsel withdrew at plaintiff's request, as they could not agree on how the case should proceed. Plaintiff was aware of counsel's motion to withdraw on February 26, or 17 days prior to the hearing on the motion to withdraw on March 14. Furthermore, plaintiff was also aware that the trial court had denied her motion for extension of time *before* it granted counsel's motion to withdraw. Despite knowing that she would have no extra time in which to retain counsel before the 30 days would run on March 17, plaintiff indicated to the trial court that she agreed to counsel's withdrawal. Plaintiff then proceeded with her postjudgment motion and other filings *pro se*.

¶ 30 Even assuming the trial court's denial violated the spirit of Rule 13, we cannot say that the trial court "bum-rushed" plaintiff by allowing counsel to withdraw, or that she was "unwary" as she claims. Plaintiff clearly chose to proceed *pro se*, and cannot now claim that she was prejudiced by that decision. This is particularly true when plaintiff fails to point out how the absence of counsel affected the underlying denial of her complaint for administrative review. She had more than 21 days after March 14 to retain counsel, yet she failed to do so.

¶ 31 We accordingly find that the trial court did not abuse its discretion in denying plaintiff's motion for extension of time. Even assuming error, plaintiff suffered no prejudice rendering any error harmless.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 34 Affirmed.